

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 290 of 2019

[Arising out of Order dated 27th August, 2019 passed by the National Company Law Tribunal, Kolkata Bench in CP (Appeal) No.465/KB/2019]

IN THE MATTER OF:

Khetan Granite Private Limited
Registered Address:
Shrirampur Road, Dhandra Jamtara,
Jharkhand-815351

Also at:

M.P. Dwibedi Road, Near Goushala,
Bhagalpur-812002, Bihar

...Appellant

Versus

Office of Registrar of Companies,
Jharkhand
Mangal Tower, 4th Floor,
Old Hazaribagh Road,
Near Kantatolichowk, Ranchi,
Jharkhand-834001.

...Respondent

Present:

For Appellant: Ms. Heena George, Advocate.

For Respondent: Mr. Prahlad Meena, ROC, Jharkhand.

J U D G M E N T

JARAT KUMAR JAIN, J.

This Appeal is preferred by Khetan Granite Private Limited against the order passed by National Company Law Tribunal, Kolkata Bench, Kolkata on 27th August, 2019 in CP (Appeal) No.465/KB/2019 by which the NCLT dismissed the Appeal and affirmed the order passed by Respondent/Registrar of Companies (ROC) 'striking off' the name of the Appellant Company from the Register of the Companies.

2. The Appellant Company was incorporated under the Companies Act, 1956 in the year 2012, having its registered office at Shrirampur Road,

Dhandra Jamtara, Jharkhand. The Appellant Company was doing business of cutting and polishing of granite and is in operation. ROC, Jharkhand served the notice under Section 248(1)(c) of the Companies Act, 2013 (for short the 'Companies Act') to the Appellant Company, as the Appellant Company has not filed the Annual Returns and Financial Statements for the Financial Years ending on 31st March, 2013 onwards. After following due procedure, the Appellant Company's name has been 'struck off' from the Register of Companies.

3. Being aggrieved with the order of ROC, Jharkhand, the Appellant Company filed an Appeal before the NCLT, Kolkata Bench, Kolkata. After hearing the parties and perusing the record and statements, NCLT found that Financial Statements demonstrate that the revenue generation from the operation for all the financial years from the date of incorporation till the date of 'striking off' the name of the Company was "NIL". The Appellant failed to prove that the Appellant Company was a going-concern or was doing business during the above period. Hence, the NCLT affirmed the order passed by ROC, Jharkhand. Being aggrieved, the Appellant Company has filed this Appeal.

4. Learned Counsel for the Appellant submits that the Appellant Company has purchased certain land vide Sale Deeds dated 17.04.2015 and 08.06.2015. This land was purchased for the purpose of business development. Learned Counsel for the Appellant also submits that the delay in filing of Annual Returns of the Company was not deliberate as the same was the result of inadvertent and unintentional mistake. However, Audited Balance Sheet and Annual Statements for the Financial Year 2012-13 onwards upto 2017-18 duly signed by the Auditors and Directors were submitted before the NCLT, Kolkata Bench. The Appellant Company had filed the Income Tax Return for the year 2017-18. It is further submitted that the Appellant had applied for expansion of projects during the year 2015 and 2016 and purchased the land from various land owners total 518.2 decimal for construction of permanent factory shed and starting the cutting, polishing and processing of the granite, marble and lime stones. 488 decimal

of land is already mutated in the records of the Block Land and Land Reforms Office Salanpur (West Bengal) in the name of Appellant Company. Copies of Sale Deeds dated 17.04.2015 and 08.06.2015 are annexed with this Appeal.

5. Learned Counsel for the Appellant submits that the Appellant Company never received any notice or communication from the ROC, Jharkhand regarding 'striking off' the name of the Appellant Company. Thus, the name of the Company was 'struck off' without giving reasonable opportunity of hearing. The Appellant Company was maintaining a Bank Account with the Bank of Baroda, Jamtara Branch. However, due to the Company's name is struck off, the Bank Account has been frozen by the Bank Authority. The Appellant Company has taken unsecured loan from time to time from its related parties, amounting to approximate Rs.1,05,50,000/- for purchasing the land and construction of factory. The ROC has failed to consider the same before 'striking off' the name of the Appellant Company. In such circumstances, the Appellant Company prays that the impugned order be set-aside and the name of the Appellant Company be directed to be restored to the Register of ROC.

6. On behalf of Respondent – ROC, written submission has been filed. In the written submission, it is stated that ROC has issued Show Cause Notice on 20th March, 2017. Thereafter, Public Notice in Form STK-5 U/s 248(1) of the Companies Act was published on 18th April, 2017, but no reply was received from the Appellant Company. Thus, the name of the Appellant Company had been deleted from the Register of Companies and published the name in official gazette on 14th July, 2017. It is also stated that the ROC does not have any objection to restore the name of the Petitioner Company, if Appellants are ready to file all the due returns under the provisions laid down under Section 403(1) proviso-1 of Companies Act r/w Companies (Registration of Offices and Fees) Rules, 2014 and is ready to pay penalty whatever imposed by this Tribunal.

7. Having heard learned Counsel for the parties, we have perused the record and documents annexed with the Appeal.

8. Admittedly, the Appellant Company was incorporated on 27th November, 2012 and the Company has not filed its Balance Sheet and Annual Returns for the Financial Year ending on 31st March, 2013 onwards, before ROC. The Appellant Company has filed true copies of Audited Balance Sheet, Profit and Loss Account along with Auditors' Report for the Financial Year 2012-13 to 2017-18 duly signed by Auditors and Directors of the Appellant Company. The Appellant Company has also filed the true copies of Income Tax Return of the Appellant Company for the year 2017-18. The Company has also filed the copies of Sale Deeds dated 17.04.2015 and 08.06.2015. By way of these Sale Deeds, the Appellant Company has purchased the land for a consideration of Rs.21,00,000/- and Rs.23,90,000/-. From Balance Sheet 2017-18, it is apparent that as on 31.03.2018 the Appellant Company has Non-current assets and current assets amounting to Rs.11,10,95,189.20. Thus, the Appellant Company is having substantial movable as well as immovable assets. Therefore, it cannot be said that the Appellant Company is not carrying on any business or operations. Hence, we are of the opinion that the order passed by the NCLT, Kolkata Bench as well as ROC, Jharkhand is not sustainable in law.

9. From the above discussions we have come to the conclusion that it would be just that the name of the company is directed to be restored.

- i) Impugned order is set aside. The name of the Appellant Company be restored to the Register of Companies subject to the following compliances.
- ii) Appellant shall pay costs of Rs.1,00,000/- (Rupees one lac) to the Registrar of Companies, Jharkhand within 30 days.
- iii) After restoration of the Company's name in the Register maintained by the ROC, the Company shall file all their Annual Returns and Balance Sheets for the Financial Year ending on 31.03.2013 and onwards. The Company shall also pay requisite charges/fee as well as late fee/charges as applicable.

- iv) In spite of present orders, ROC will be free to take any other steps punitive or otherwise under the Companies Act, 2013 for non-filing/late filing of statutory returns/documents against the Company and Directors.

The appeal is accordingly allowed. However, no order as to cost.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Mr. Balvinder Singh]
Member (Technical)

[Dr. Ashok Kumar Mishra]
Member (Technical)

NEW DELHI

20th January, 2020

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